

MF 96-8

Tax Type: MOTOR FUEL USE TAX

Issue: Use Tax on Purchases, Fixed Assets, or Consumables

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

TAXPAYER)	
Taxpayer)	
)	Docket #
v.)	IBT #
)	
THE DEPARTMENT OF REVENUE)	Motor Fuel Refund Claim
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: ATTORNEY, ATTORNEY FOR TAXPAYER

SYNOPSIS:

TAXPAYER, (THE "TAXPAYER") FILED AN ILLINOIS MOTOR FUEL TAX REFUND CLAIM WITH THE ILLINOIS DEPARTMENT OF REVENUE (THE "DEPARTMENT") FOR THE PERIOD OF AUGUST THROUGH SEPTEMBER, 1992, IN THE AMOUNT OF \$46,567.19. THE DEPARTMENT DENIED THE CLAIM FINDING THAT THE TAXPAYER DID NOT PAY MISSOURI TAX ON THE MOTOR FUEL AND THEREFORE WAS NOT ENTITLED TO A REFUND. THE TAXPAYER PROTESTED THE DENIAL AND REQUESTED A HEARING. AT THE HEARING IT WAS NOT ESTABLISHED THAT THE TAXPAYER HAD IN FACT PAID THE TAX TO ANOTHER STATE ON THE MOTOR FUEL. IT IS THEREFORE RECOMMENDED THAT THE DIRECTOR OF THE DEPARTMENT UPHOLD THE DENIAL OF THE CLAIM IN ITS ENTIRETY.

FINDINGS OF FACT:

1. THE DEPARTMENT'S PRIMA FACIE CASE WAS ESTABLISHED BY ADMISSION INTO EVIDENCE OF DEPARTMENT'S EXHIBITS 1 THROUGH 5.

2. WITNESS WAS THE VICE-PRESIDENT OF THE TAXPAYER DURING THE PERIOD IN QUESTION. TR. P. 9

3. WITNESS WAS ALSO THE PRESIDENT OF COMPANY DURING AUGUST AND SEPTEMBER, 1992. TR. PP. 9-10

4. TAXPAYER PAID ILLINOIS TAX IN THE AMOUNT OF \$46,567.19 FOR FUEL DURING THE PERIOD IN QUESTION. TR. P. 11; DEPT. EX. NO. 5

5. THE FUEL WAS SOLD TO CUSTOMERS WITHIN THE STATE OF MISSOURI BY COMPANY. TR. P. 12

6. COMPANY PAID TAXES ON THE FUEL TO THE STATE OF MISSOURI. TR. P. 12; DEPT. EX. NO. 1

7. THE LEGAL POSITION OF THE TAXPAYER WAS THAT TAXPAYER WAS A DISTRIBUTOR AS DEFINED IN 35 ILCS 505/1.2. DEPT. EX. NO. 5

8. TAXPAYER WAS NOT LICENSED AS A DISTRIBUTOR IN THE STATE OF ILLINOIS DURING AUGUST AND SEPTEMBER, 1992. TR. P. 13

9. COMPANY WAS LICENSED AS A DISTRIBUTOR IN ILLINOIS DURING THE TIME PERIOD AT ISSUE. TR. P. 13

10. COMPANY AND TAXPAYER ARE NOT THE SAME ENTITIES. TR. P. 14

CONCLUSIONS OF LAW:

THE MOTOR FUEL TAX ACT IMPOSES A TAX ON THE RIGHT TO OPERATE MOTOR VEHICLES IN THE STATE OF ILLINOIS PURSUANT TO 35 ILCS 505/2. THE SECTION STATES:

§ 2. A TAX IS IMPOSED ON THE PRIVILEGE OF OPERATING MOTOR VEHICLES UPON THE PUBLIC HIGHWAYS AND RECREATIONAL-TYPE WATERCRAFT UPON THE WATERS OF THIS STATE.

UNDER THE SAME STATUTE IS A PROVISION FOR A REIMBURSEMENT OF TAX IF
A PURCHASER PAYS MOTOR FUEL TAX ON THE SAME FUEL IN ANOTHER STATE. 35

ILCS 505/13 SPECIFICALLY, THE STATUTE PROVIDES:

§ 13. ...

ANY PERSON WHO PURCHASES MOTOR FUEL IN ILLINOIS AND USES
THAT MOTOR FUEL IN ANOTHER STATE AND THAT OTHER STATE
IMPOSES A TAX ON THE USE OF SUCH MOTOR FUEL SHALL BE
REIMBURSED AND REPAID THE AMOUNT OF ILLINOIS TAX PAID UNDER
SECTION 2 OF THIS ACT ON THE MOTOR FUEL USED IN SUCH OTHER
STATE. REIMBURSEMENT AND REPAYMENT SHALL BE MADE BY THE
DEPARTMENT UPON RECEIPT OF ADEQUATE PROOF OF TAXES PAID TO
ANOTHER STATE AND THE AMOUNT OF MOTOR FUEL USED IN THAT
STATE....

ANY DISTRIBUTOR OR SUPPLIER WHO HAS PAID THE TAX
IMPOSED BY SECTION 2 OF THIS ACT UPON MOTOR FUEL LOST OR USED BY
SUCH DISTRIBUTOR OR SUPPLIED FOR ANY PURPOSE OTHER THAN
OPERATING A MOTOR VEHICLE UPON THE PUBLIC HIGHWAYS OR WATERS
MAY FILE A CLAIM FOR CREDIT OR REFUND TO RECOVER THE AMOUNT SO
PAID....

IN THE INSTANT CASE, THE TESTIMONY OF THE TAXPAYER WAS THAT
TAXPAYER AND COMPANY WERE NOT THE SAME COMPANY. WHILE IT IS NOT DISPUTED
THAT TAXPAYER PAID MOTOR FUEL TAX TO THE STATE OF ILLINOIS AND COMPANY
PAID TAX TO THE STATE OF MISSOURI DURING THE SAME TIME PERIOD, THE TWO
COMPANIES ARE NOT THE SAME ENTITY. THE MOTOR FUEL TAX ACT DEFINES PERSON
AT 35 ILCS 505/1.11 AS:

"PERSON" MEANS ANY NATURAL INDIVIDUAL, FIRM, TRUST, ESTATE,
PARTNERSHIP, ASSOCIATION, JOINT STOCK COMPANY, RECEIVER,
TRUSTEE, GUARDIAN...

THERE WAS NO ADEQUATE PROOF OF TAXES PAID TO ANOTHER STATE BY ANY
PERSON WHO PURCHASED MOTOR FUEL IN ILLINOIS, AS IS REQUIRED BY THE STATUTE
AND RULES.

THE STATUTE STATES THAT A PERSON WHO PURCHASES MOTOR FUEL IN
ILLINOIS AND USES THAT MOTOR FUEL IN ANOTHER STATE AND THAT OTHER STATE
IMPOSES A TAX ON THE USE OF SUCH MOTOR FUEL MAY GET A REFUND. TAXPAYER

DID NOT USE THE MOTOR FUEL IN MISSOURI; IT EITHER SOLD OR DISTRIBUTED THE FUEL TO COMPANY IN MISSOURI. THEREFORE THE PORTION OF THE STATUTORY REQUIREMENT REGARDING USAGE WAS NOT MET.

ALTHOUGH THE CORRESPONDENCE OF THE ATTORNEY ASSERTED THAT THEIR LEGAL POSITION WAS THAT THE TAXPAYER WAS A DISTRIBUTOR, THE TESTIMONY OF THE TAXPAYER WAS THAT HE WAS NOT A DISTRIBUTOR IN ILLINOIS DURING THE TIME PERIOD IN QUESTION. PURSUANT TO 35 ILCS 505/3, ILLINOIS LAW REQUIRES THAT:

§ 3. NO PERSON SHALL ACT AS A DISTRIBUTOR OF MOTOR FUEL WITHIN THIS STATE WITHOUT FIRST SECURING A LICENSE TO ACT AS A DISTRIBUTOR OF MOTOR FUEL FROM THE DEPARTMENT.

THERE WAS NO EVIDENCE GIVEN THAT THE TAXPAYER WAS A DISTRIBUTOR OR LICENSED AS A DISTRIBUTOR DURING THE TIME PERIOD IN QUESTION. I FIND THAT THE PORTION OF THE STATUTE THAT RELATES TO DISTRIBUTORS IS INAPPLICABLE TO THIS MATTER AND THAT THE TAXPAYER DOES NOT QUALIFY FOR A REFUND UNDER THAT PROVISION.

I THEREFORE RECOMMEND THAT THE DIRECTOR OF THE DEPARTMENT UPHOLD THE DENIAL OF THE CLAIM FOR REFUND, ISSUED TO TAXPAYER ON OCTOBER 19, 1994 IN THE AMOUNT OF \$46,567.19.

RESPECTFULLY SUBMITTED,

BARBARA S. ROWE
ADMINISTRATIVE LAW JUDGE

FEBRUARY 8, 1996